

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #12	CCRB Case #: 201408975	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/28/2014 1:15 AM	Location of Incident: East 140th Street and Canal Place	Precinct: 40	18 Mo. SOL 2/28/2016	EO SOL 2/28/2016	
Date/Time CV Reported Fri, 08/29/2014 7:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 08/29/2014 7:53 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Zanca	16771	952366	040 PCT
2. POM James Mcguire	17556	951988	040 PCT
3. SGT Brian Kovall	4460	942023	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Chikei Ian	3576	944664	040 PCT
2. POM Brian Mccarthy	06446	933979	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Zanca	Abuse: PO John Zanca stopped § 87(2)(b)	
B.POM James Mcguire	Abuse: PO James Mcguire stopped § 87(2)(b)	
C.POM John Zanca	Force: PO John Zanca used physical force against § 87(2)(b)	
D.SGT Brian Kovall	Force: Sgt. Brian Kovall used physical force against § 87(2)(b)	

### Case summary

On August 28, 2014, at approximately 1:00 a.m., § 87(2)(b) arrived at the ‘Sin City’ strip club located at 2520 Park Avenue in the Bronx. § 87(2)(b) was wearing a gray t-shirt, cutoff jeans and a gray hat. He was not in possession of a weapon and did not have anything on him that could have been interpreted as a weapon.

§ 87(2)(b) had negative relations with the management of this club in the past and on the day of the incident, the bouncers informed him that he was still banned from entering. § 87(2)(b) decided to go inside the club anyways and remained for approximately two minutes, during which time he looked for the owner and then left.

While he was on Canal Place, a marked police vehicle drove down a cross street at either 139<sup>th</sup> or 140<sup>th</sup> Street and parked in the middle of the street. PO John Zanca and PO James McGuire, of the 40<sup>th</sup> Precinct, called § 87(2)(b) over to their vehicle. § 87(2)(b) complied, walked over, and asked what he did. PO Zanca replied by saying, “Stop moving. Stop moving. Put your hands on the car” (**Allegations A and B**). After § 87(2)(b) asked why he had to put his hands on the car, PO Zanca replied by saying, “Just put your hands on the car.”

PO Zanca then grabbed or touched § 87(2)(b) on his back right side of his shirt. In response, § 87(2)(b) told him not to touch him and immediately began running. PO Zanca ran closely behind him and told § 87(2)(b) to stop. § 87(2)(b) stopped because he was tired.

As PO Zanca approached § 87(2)(b) PO Zanca held his arm straight. PO Zanca hit § 87(2)(b) in the upper back and neck, which caused § 87(2)(b) to fall to the ground. PO Zanca then tackled § 87(2)(b) causing § 87(2)(b) to land on his right side. PO Zanca proceeded to straddle § 87(2)(b) so that he could not turn all the way to the ground and punched § 87(2)(b) in the face with a closed fist approximately four to five times (**Allegation C**).

§ 87(2)(b) asked PO Zanca why he was hitting him as he was not resisting and there were nearby cameras. PO Zanca told him that he did not care and stated, “Shut up. Turn around. Let me cuff you.” In response, § 87(2)(b) rolled onto his stomach and told PO Zanca that he could handcuff him.

A black unmarked vehicle containing Sgt. Brian Kovall and PO Brian McCarthy, also of the 40<sup>th</sup> Precinct, arrived on scene. Sgt. Kovall, who exited from the passenger side, walked over and kicked § 87(2)(b) on the left side of his face, making contact with his mouth (**Allegation D**).

After § 87(2)(b) was handcuffed and as he was being lifted from the ground, several police vehicles and approximately eight officers arrived. § 87(2)(b) was escorted into a police vehicle and transported to the 40<sup>th</sup> Precinct by PO Zanca and PO McGuire.

Once at the precinct, an officer called for an ambulance. After the EMTs arrived, § 87(2)(b) was transported to § 87(2)(b) with PO McGuire. While at the hospital, the doctor cleaned a cut on § 87(2)(b) face and refused to give him stitches. After § 87(2)(b) was taken back to the precinct, he was placed in holding cells before being transported to Central Booking. While at Central Booking, he was taken back to § 87(2)(b) and received no additional treatment.

§ 87(2)(b) received an approximately one-centimeter wide abrasion on the left side of his nose above his lip, which he believed was the result of getting punched. He also obtained a cut and swelling on his lower lip, as well as a minor cut on the inside of his upper lip, which believed was the result of getting kicked.

§ 87(2)(b)

This case was originally assigned to Investigator Jessica Kulig. On June 11, 2014, the case was reassigned to Investigator Chelsea Yogerst, of the case closing unit.

### **Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation due to the IAB investigation.
- The New York City Comptroller's Office confirmed § 87(2)(b) did not file a notice of claim regarding this incident (see 04 Board Review).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Civilian and Officer CCRB History**

- PO Zanca has been a member of the service for three years and has one prior CCRB complaint where an allegation of physical force was closed as victim unavailable
- PO McGuire has been a member of the service three years and has no prior CCRB complaints.
- Sgt. Kovall has been a member of the service for eight years and has four prior CCRB complaints where allegations of stop, frisk, search, physical force and § 87(2)(g), § 87(4-b) [REDACTED] were closed as unsubstantiated, exonerated or as other misconduct.
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]

### **Medical Records**

- § 87(2)(b) went to § 87(2)(b) [REDACTED], the same day of the incident. Medical records show that § 87(2)(b) chief complaint was a laceration on his lower lip and cut to his left face. He also alleged that he was punched and kicked by several officers. On a pain scale of one to ten, § 87(2)(b) indicated his pain to be a four. § 87(2)(b) had a facial soft tissue injury and was offered Tylenol but he refused. His superficial wounds were irrigated, cleaned and bacitracin was applied (see medical records).
- § 87(2)(b) returned to § 87(2)(b) [REDACTED]. Medical records show that § 87(2)(b) chief complaint was a cheek and lip pain after an assault a few days ago. On a pain scale of one to ten, § 87(2)(b) indicated his pain to be a two. § 87(2)(b) had a lip and facial abrasion and a lower lip infection. He was prescribed Albuterol (see medical records).

### **Police Documentation**

#### **SPRINT Event** § 87(2)(b) [REDACTED]

The Event Summary (see 07 Board Review) notes that on August 28, 2014, at approximately 1:22 a.m., a call was made to 911 to report a male trespasser who had a blade and had forced his way into a club that he was banned from. A clothing description of the perpetrator

was provided and included jeans, a gray t-shirt, a “kango” hat and described him to be in his thirties. At 1:27 a.m., this perpetrator fled to East 140<sup>th</sup> Street and Canal Street. At 1:37 a.m., sector 40G had the perpetrator under arrest and requested EMS to the 40<sup>th</sup> Precinct.

### **911 Communications CD**

A call made to 911 by a male with the last name “§ 87(2)(b)” who reported that a black male in his thirties was present and had forced his way into a club that he was banned from. He also reported that the male had a knife/blade in his hand, stated that he was going to cut anyone that touched him, and was wearing cut-off jeans, a grey t-shirt, and a grey kangol hat.

At 00:54 in the recording, central reports a dispute with a knife at 2520 Park Avenue and provides the description. 40 Sergeant responds that he was on his way.

At 2:44, sector 40G states that they spoke to the security, that the suspect is east bound on 138<sup>th</sup> Street and that they are going to canvas. An officer then asks 40G what they had and they reply that they observe an individual on 138<sup>th</sup> Street wearing cut jeans and a grey shirt.

At 4:25, sector 40G states that they have one individual stopped on Canal Place. 40G then states that the suspect is headed southbound on Canal Place. Central asks 40G which direction the suspect is running. 40G states that he is running toward 141<sup>st</sup> Street. 40G then states “We got him,” and a male’s voice can be heard making a quick loud noise in the background.

At 5:02, an officer states that no further units are needed.

At 15:00, a crime sergeant states that 40G has one individual under arrest at 140<sup>th</sup> Street and Canal Place in regards to the dispute on Park Avenue and the individual is being transported to the stationhouse.

### **40<sup>th</sup> Precinct Roll Call**

The Roll Call confirms that PO McGuire and PO Zanca were assigned to Sector G and to vehicle 3430. It also confirms that Sgt. Kovall and PO McCarthy were assigned to vehicle 308 (see 08 Board Review).

### **Arrest Report**

On August 28, 2014, PO Zanca generated Arrest Report § 87(2)(b) (see 09 Board Review), for § 87(2)(b) who was charged with criminal trespassing in the first and third degree, criminal possession of a weapon in the third and fourth degree, menacing in the second and third degree and obstructing governmental administration in the second degree. The report states that “At TPO c/v who is security at above location states that defendant did force his way into location without permission or authority to do so. C/V also states that when defendant was asked to leave, the defendant did display a razor blade in a threatening manner. Upon further investigation when A/O attempted to place defendant in custody, the defendant fled on foot from A/O reaching for his waistband. Defendant then was swinging and flaring arms, grabbing A/O. Put A/O in fear for his safety. The report also notes that no force was used.

### **Arrest Photograph**

§ 87(2)(b) arrest photograph (see 10 Board Review) shows a laceration on his left cheek and a swollen lip.

### **Command Log**

The command log entry (see 11 Board Review) confirms § 87(2)(b) arresting officer was PO Zanca. The log also notes that § 87(2)(b) was agitated and belligerent, that medical attention was requested and that § 87(2)(b) was taken to § 87(2)(b).

### **Prisoner Holding Pen Roster**

The prisoner holding pen roster (see 12 Board Review) shows that § 87(2)(b) arrived at the precinct at 2:15 a.m. § 87(2)(b) It also states that PO Zanca was in charge of guarding him.

### **Findings and Recommendations**

#### **Subject Officer Identification**

§ 87(2)(b) obtained PO Zanca's name off his uniform during the incident. PO Zanca's physical pedigree information is consistent with the description § 87(2)(b) provided. PO Zanca acknowledged being the officer who stopped and struggled with § 87(2)(b). Therefore, **Allegations A and C** are being pleaded against him.

PO Zanca identified his partner on the incident date as PO McGuire. PO McGuire's physical pedigree information is consistent with the description that § 87(2)(b) provided, and PO McGuire admitted to stopping § 87(2)(b) during the incident. Therefore, **Allegation B** is being pleaded against him.

Although § 87(2)(b) described two officers as a white male, chubby, 5'9"-5'10" tall, in their mid-40s with gray hair, glasses and wearing plain clothes, he stated that the officer who kicked him, exited from the passenger seat of the vehicle. Sgt. Kovall testified that he was in the passenger side of the vehicle and assisted in § 87(2)(b) apprehension. Given that his pedigree information is consistent with the physical description § 87(2)(b) provided, **Allegation D** is being pleaded against him.

#### **Recommendations**

**Allegation A-Abuse of Authority: PO John Zanca stopped § 87(2)(b)**

**Allegation B-Abuse of Authority: PO James McGuire stopped § 87(2)(b)**

§ 87(2)(b) alleged that two officers, determined by the investigation to be PO Zanca and PO McGuire, called him over to his vehicle. PO Zanca then commanded § 87(2)(b) to stop moving and to put his hands on the car.

PO Zanca testified that he was driving with PO McGuire when he received a radio run regarding a dispute with a knife at 2520 Park Avenue in the Bronx. A description of a "male black with boat/tango hat, jean shorts, and grey shirt with a knife" was provided over the radio.

Once PO Zanca and PO McGuire arrived at the aforementioned address, the strip club bouncer informed them that an individual, determined by the investigation to be § 87(2)(b) had refused to wait in line and show identification. At one point, § 87(2)(b) pulled out his 'blade' in an aggressive manner and told the bouncers to back off before he ran northbound on Park Avenue. This bouncer also informed the officers that the perpetrator was a black male, dressed in jean shorts, a grey shirt, and a boat/ 'tango' hat.

The officers drove around the area until they saw § 87(2)(b) who matched the description given over the radio, about two blocks away from the strip club. They made this observation approximately three or five minutes after initially receiving the radio run. § 87(2)(b) looked nervous and as though he was going to flee. § 87(2)(b) also reached down near his waistband, at which point, his hands were not visible.

PO Zanca and PO McGuire stopped and exited their vehicle with the intention to question § 87(2)(b). A large bulge in § 87(2)(b) pants pockets was observed, however PO Zanca could not tell what the bulge was, nor could he make out the shape. PO Zanca could not recall the exact size; however it was large enough that it was noticeable in his pocket.





**Allegation D-Abuse of Authority: Sgt. Brian Kovall used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that an officer, determined by the investigation to be Sgt. Kovall, kicked him twice on the left side of his face, making contact with his mouth.

PO Zanca did not recall if any additional officers were involved in the apprehension or handcuffing of § 87(2)(b). He also could not recall if he observed any plainclothes officers kick § 87(2)(b) in the face or make physical contact with § 87(2)(b) while he was on the ground or being handcuffed.

PO McGuire stated that no plainclothes officers participated in the § 87(2)(b) handcuffing and he did not see any plainclothes officers make physical contact with § 87(2)(b). PO McGuire denied seeing any plainclothes officers stand close to § 87(2)(b) and PO Zanca while they were on the ground and denied seeing any plainclothes officers kick § 87(2)(b).

Sgt. Kovall testified that because § 87(2)(b) was actively resisting and refusing to put his hands behind his back, he assisted in his apprehension. Sgt. Kovall went to the left side of § 87(2)(b) near his shoulder during which time, § 87(2)(b) hands were tucked up in front of his chest and a struggle was ensuing. The officers eventually pulled § 87(2)(b) hands back and successfully handcuffed him. Besides pulling the hands back, no other force was used to overcome § 87(2)(b) resistance. Sgt. Kovall denied kicking § 87(2)(b) in the face and denied that his foot or shoe came in contact with § 87(2)(b). Sgt. Kovall believed that PO McCarthy remained in the police vehicle and did not recall him assisting in the handcuffing.

PO McCarthy testified that Sgt. Kovall got out of the vehicle before him and assisted in the apprehension. PO McCarthy did not see or hear Sgt. Kovall interact with § 87(2)(b) prior to his exit of the vehicle. Once PO McCarthy exited, § 87(2)(b), PO Zanca and Sgt. Kovall were on the ground and the officers had already begun to place § 87(2)(b) in handcuffs. PO McCarthy did not see how § 87(2)(b) was brought to the ground. § 87(2)(b) was tussling, had his hands at this side or right under his stomach and was moving his shoulders and torso back and forth. PO McCarthy assisted by ensuring that § 87(2)(b) did not kick any officers but he could not recall if § 87(2)(b) actually kicked or if he had to actually hold § 87(2)(b) legs down. PO McCarthy denied kicking § 87(2)(b) in the face and denied that his foot or shoe came in contact with § 87(2)(b)'s head or face. He also denied that he saw any other officer kick § 87(2)(b) in the face.

§ 87(2)(g), § 87(2)(b)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_



	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date